

Status: Point in time view as at 13/06/2011.

Changes to legislation: There are currently no known outstanding effects for the Postal Services Act 2011. (See end of Document for details)

SCHEDULES

VALID FROM 01/10/2011

SCHEDULE 1

Section 8

TRANSFER SCHEMES

Introduction

- 1 In this Schedule—
- “transfer scheme” means a transfer scheme under section 8,
 - “transferee”—
 - (a) in relation to a transfer scheme, means a person to whom property, rights or liabilities are transferred in accordance with the scheme, and
 - (b) in relation to particular property, rights or liabilities transferred or created in accordance with a transfer scheme, means the person to whom that property or those rights or liabilities are transferred or in whose favour, or in relation to whom, they are created,
 - “transferor”—
 - (a) in relation to a transfer scheme, means a person from whom property, rights or liabilities are transferred in accordance with the scheme, and
 - (b) in relation to particular property, rights or liabilities transferred or created in accordance with a transfer scheme, means the person from whom that property or those rights or liabilities are transferred or the person who or whose property is subject to the interest or right created by the scheme or for whose benefit the liability is created, and
 - “third party”, in relation to a transfer scheme, means any person other than a transferor or transferee.

Identification of property etc to be transferred

- 2
- (1) A transfer scheme may identify the property, rights and liabilities to be transferred by specifying or describing them.
 - (2) A transfer scheme may provide for the way in which property, rights or liabilities of any description are to be identified.

Property, rights and liabilities that may be transferred

- 3
- (1) A transfer scheme may transfer—
 - (a) property situated in any part of the world,

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(b) rights and liabilities arising (in any way) under the law of any country or territory.

(2) The property, rights and liabilities that may be transferred by a transfer scheme include—

- (a) property, rights and liabilities acquired or arising after the scheme has been made but before the time specified under paragraph 6(1),
- (b) rights and liabilities arising after that time in respect of matters occurring before that time,
- (c) property, rights and liabilities that would not otherwise be capable of being transferred or assigned.

(3) The transfers to which effect may be given by a transfer scheme include ones that are to take effect as if there were no such contravention, liability or interference with any interest or right as there would otherwise be by reason of any provision having effect in relation to the terms on which the transferor is entitled or subject to anything to which the transfer relates.

(4) In sub-paragraph (3) the reference to any provision is a reference to any provision, whether under an enactment or agreement or otherwise.

(5) Sub-paragraph (3) has effect where shares in a subsidiary of the transferor are transferred as if the reference to the terms on which the transferor is entitled or subject to anything to which the transfer relates included a reference to the terms on which the subsidiary is entitled or subject to anything immediately before the transfer takes effect.

Dividing and modifying transferor's property, rights and liabilities

4 (1) A transfer scheme may contain provision—

- (a) for the creation, in favour of a transferor or transferee, of an interest or right in or in relation to property or rights transferred in accordance with the scheme,
- (b) for giving effect to a transfer by the creation, in favour of the transferee, of an interest or right in or in relation to property or rights retained by a transferor, and
- (c) for the creation of new rights and liabilities (including rights of indemnity and duties to indemnify) as between different transferees and as between a transferee and a transferor.

(2) A transfer scheme may contain provision for the creation of rights and liabilities for the purpose of converting arrangements between different parts of a transferor's undertaking into a contract—

- (a) between different transferees, or
- (b) between a transferee and a transferor.

(3) A transfer scheme may contain provision—

- (a) for rights and liabilities to be transferred so as to be enforceable by or against more than one transferee or by or against both the transferee and the transferor, and
- (b) for rights and liabilities enforceable against more than one person in accordance with provision falling within paragraph (a) to be enforceable in different or modified respects by or against each or any of them.

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(4) A transfer scheme may contain provision for interests, rights or liabilities of third parties in relation to anything to which the scheme relates to be modified in the manner set out in the scheme.

(5) Paragraph 3(2)(c) and (3) apply to the creation of interests and rights as they apply to the transfer of interests and rights.

Obligation to effect transfers etc

- 5 (1) A transfer scheme may impose on a transferee or transferor an obligation—
- (a) to enter into an agreement (specified or described in the scheme) with another person on whom a corresponding obligation is, could be or has been imposed as a result of this paragraph (whether in the same or a different scheme), or
 - (b) to execute an instrument (specified or described in the scheme) in favour of such a person.
- (2) A transfer scheme that imposes such an obligation may provide that paragraph 3(3) applies (to the extent specified in the scheme) in relation to—
- (a) a transfer made by or under an agreement or instrument made in pursuance of the obligation, and
 - (b) interests or rights created by or under such an agreement or instrument.
- (3) Subject to that, nothing in paragraph 3 enables—
- (a) an agreement or instrument made in pursuance of such an obligation, or
 - (b) anything done under such an agreement or instrument,
- to give effect to a transfer, or to create an interest or right, that could not otherwise have been made or created by or under the agreement or instrument.
- (4) An obligation imposed as a result of sub-paragraph (1) may be enforced by the person with, or in favour of, whom the agreement or instrument is to be entered into or executed, in proceedings for any of the following—
- (a) an injunction,
 - (b) specific performance of a statutory duty under section 45 of the Court of Session Act 1988,
 - (c) any other appropriate remedy or relief.

Effect of transfer scheme: general

- 6 (1) At the time specified in the scheme—
- (a) the property, rights and liabilities to be transferred in accordance with the scheme, and
 - (b) the interests, rights and liabilities to be created in accordance with the scheme,
- are, as a result of this sub-paragraph, to vest in the transferee.
- (2) Sub-paragraph (1) is subject to any provision of the scheme that provides that the transfer or creation of any property, interests, rights or liabilities is to be effected by or under an agreement or instrument entered into or executed in pursuance of an obligation imposed by virtue of paragraph 5(1).

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Effect of transfer scheme on right to terminate or modify interest etc

- 7 (1) This paragraph applies where a person would otherwise be entitled, in consequence of anything done or likely to be done by or under this Act in connection with a transfer scheme—
- (a) to terminate, modify, acquire or claim an interest or right, or
 - (b) to treat an interest or right as modified or terminated.
- (2) The entitlement—
- (a) is not enforceable in relation to the interest or right until after the transfer of the interest or right by the scheme, and
 - (b) after that transfer, is enforceable in relation to the interest or right only in so far as the scheme contains provision for the interest or right to be transferred subject to whatever confers the entitlement.
- (3) Where shares in a subsidiary of the transferor are transferred, sub-paragraph (2) has effect in relation to an interest or right of the subsidiary as if the references to the transfer of the interest or right included a reference to the transfer of the shares.
- (4) A transfer scheme that (as a result of paragraph 5(1)) contains an obligation to enter into or execute an agreement or instrument may provide for sub-paragraphs (1) to (3) to apply to interests or rights affected by—
- (a) the agreement or instrument, or
 - (b) a proposal for the agreement or for the execution of the instrument.
- (5) Where the scheme does so provide, sub-paragraphs (1) to (3) apply in relation to the interests or rights as if references there to the transfer scheme included the agreement or instrument.

Supplementary provisions of schemes

- 8 (1) A transfer scheme may—
- (a) contain incidental, supplementary, consequential, transitional, transitory or saving provision, and
 - (b) make different provision for different cases or circumstances.
- (2) Nothing in paragraphs 9 to 13 limits sub-paragraph (1).
- (3) In those paragraphs any reference to a transfer in accordance with a transfer scheme includes the creation in accordance with a transfer scheme of an interest, right or liability.
- 9 (1) A transfer scheme may provide, in relation to transfers in accordance with the scheme—
- (a) for a transferee to be treated as the same person in law as the transferor,
 - (b) for agreements made, transactions effected or other things done by or in relation to the transferor to be treated, so far as may be necessary for the purposes of or in connection with the transfers, as made, effected or done by or in relation to a transferee,
 - (c) for references in any document to the transferor, or to an employee or office holder of the transferor, to have effect, so far as may be necessary for the purposes of or in connection with any of the transfers, with such modifications as are specified in the scheme, and

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- (d) for proceedings commenced by or against the transferor to be continued by or against a transferee.
- (2) In sub-paragraph (1)(c) “document” includes an agreement or instrument, but does not include an enactment.
- 10 (1) A transfer scheme may contain provision about—
- (a) the transfer of foreign property, rights and liabilities,
 - (b) the creation of foreign rights, interests and liabilities.
- (2) For the purposes of this paragraph property, or a right, interest or liability, is “foreign” if an issue relating to it arising in any proceedings would (in accordance with the rules of private international law) be determined under the law of a country or territory outside the United Kingdom.
- 11 (1) A transfer scheme may contain provision for and in connection with the payment of compensation to third parties whose property, rights, interests or liabilities have been affected by (or as a result of) a transfer scheme.
- (2) The provision may provide for the appointment of an arbitrator to determine disputes about compensation.
- 12 A transfer scheme may make provision for disputes as to the effect of the scheme—
- (a) between different transferees, or
 - (b) between a transferee and a transferor,
- to be referred to such arbitration as may be specified in or determined under the scheme.
- 13 (1) This paragraph applies if, in consequence of a transfer scheme, a person (“P”) is entitled to possession of a document relating in part to the title to, or to the management of, land or other property.
- (2) If the land or other property is in England and Wales—
- (a) the scheme may provide for P to be treated as having given another person an acknowledgement in writing of the other person's right to production of the document and to delivery of copies of it, and
 - (b) section 64 of the Law of Property Act 1925 (production and safe custody of documents) is to apply to the acknowledgement and is to apply on the basis that the acknowledgement does not contain an expression of contrary intention.
- (3) If the land or other property is in Scotland, section 16(1) of the Land Registration (Scotland) Act 1979 (omission of certain clauses in deeds) has effect in relation to the transfer as if—
- (a) the transfer had been effected by deed, and
 - (b) the words “unless specially qualified” were omitted from that subsection.
- (4) If the land or other property is in Northern Ireland—
- (a) the scheme may provide for P to be treated as having given another person an acknowledgement in writing of the other person's right to production of the document and to delivery of copies of it, and
 - (b) section 9 of the Conveyancing Act 1881 (which corresponds to section 64 of the 1925 Act) is to apply to the acknowledgement and is to apply on the

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basis that the acknowledgement does not contain an expression of contrary intention.

Proof of title by certificate

- 14 A certificate issued by the Secretary of State to the effect that any property, interest, right or liability vested (in accordance with a transfer scheme) in a person specified in the certificate at a time so specified is conclusive evidence of the matters so specified.

Staff

- 15 The Transfer of Undertakings (Protection of Employment) Regulations 2006 apply to a transfer (under a transfer scheme) of rights and liabilities under a contract of employment (whether or not the transfer would otherwise be a relevant transfer for the purposes of those regulations).

- 16 If an employee of the transferor becomes an employee of a transferee as a result of a transfer scheme—
- (a) a period of employment with the transferor is to be treated as a period of employment with the transferee, and
 - (b) the transfer to the transferee is not to be treated as a break in service.

Modification of scheme

- 17 (1) If—
- (a) before the end of the period of 3 years beginning with the time specified under paragraph 6(1), the transferor and transferee agree in writing that the scheme is to be treated as having come into force at that time with such modifications as are specified in the agreement, and
 - (b) the Secretary of State, with the consent of the Treasury, approves the agreement,
- the scheme as modified is to be treated for all purposes as having come into force at that time.
- (2) An agreement under this paragraph may, in connection with giving effect to modifications to the scheme—
- (a) contain incidental, supplementary, consequential, transitional, transitory or saving provision, and
 - (b) make different provision for different cases or circumstances.

Disapplication of certain company law provisions etc

- 18 Nothing in—
- (a) Part 23 of the Companies Act 2006 (distributions), or
 - (b) any rule of law relating to distributions by companies or the maintenance of capital by companies,
- applies in relation to a transfer of property, rights or liabilities, or the creation of rights or interests, by or under a transfer scheme.

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- 19 For the purposes of any enactment none of the following persons are to be regarded as shadow directors of a transferor or transferee in relation to anything done by or under a transfer scheme—
- (a) the Secretary of State or the Treasury (or a nominee of either of them), or
 - (b) a person employed by, or acting on behalf of, anyone within paragraph (a).

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SCHEDULE 2

Section 10

TAXATION PROVISIONS RELATING TO RE-STRUCTURING ETC

Transfer of securities of subsidiaries of original holding company to Crown etc

- 1 (1) This paragraph applies where—
- (a) there is a disposal of securities of a subsidiary of the original holding company to the Secretary of State or the Treasury (or a nominee of either of them) or to a company wholly owned by the Crown, and
 - (b) immediately before the disposal, the subsidiary was wholly owned by the original holding company.
- (2) For the purposes of the Taxation of Chargeable Gains Act 1992 the disposal is to be treated in relation to—
- (a) the person making the disposal, and
 - (b) the person to whom the disposal is made,
- as made for a consideration such that no gain or loss accrues to the person making the disposal.
- (3) The degrouping provisions are not to apply by reason of the disposal or any agreement to make the disposal (if they otherwise would).
- (4) In this Schedule a “degrouping provision” means—
- (a) section 179 of the Taxation of Chargeable Gains Act 1992 (company ceasing to be member of group), or
 - (b) paragraph 3 of Schedule 7 to the Finance Act 2003 (withdrawal of SDLT group relief).
- (5) Stamp duty is not chargeable on the instrument effecting the disposal.
- (6) This paragraph applies whether or not the disposal is made by or under a transfer scheme under section 8.
- 2 (1) This paragraph applies where—
- (a) paragraph 1(3) has applied at any time in relation to a disposal or an agreement to make a disposal,
 - (b) there is a subsequent disposal of securities of the subsidiary in relation to which paragraph 1(3) does not apply, and

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(c) immediately before the subsequent disposal or the making of an agreement to make it, the subsidiary was a member of a new group.

(2) For the purposes of the application of a degrouping provision in the case of that disposal or agreement—

(a) the company from which the subsidiary acquired relevant assets or chargeable interests is to be treated as if it had been a member of the new group at the time the relevant assets or chargeable interests were acquired, and

(b) that company is to be treated as if it were a member of the new group immediately before the disposal or the making of the agreement mentioned in sub-paragraph (1)(c).

(3) “Relevant assets or chargeable interests” means assets or chargeable interests in relation to which, but for paragraph 1(3), the degrouping provision in question would have applied by reason of the disposal or agreement mentioned in sub-paragraph (1)(a).

(4) In this paragraph—

(a) references to a group have the same meaning as in the degrouping provision in question, and

(b) references to a new group are to a group other than a group of which the subsidiary was a member immediately before the making of a disposal or an agreement in relation to which paragraph 1(3) applied.

Transfers of property, rights and liabilities by transfer schemes

3 In paragraphs 4 to 6—

a “relevant transfer” means a transfer of any property, rights or liabilities by or under a transfer scheme under section 8, and

“transferor” and “transferee” have the same meaning as in Schedule 1.

4 For the purposes of the Taxation of Chargeable Gains Act 1992 a disposal constituted by a relevant transfer is to be treated in relation to the transferor and transferee as made for a consideration such that no gain or loss accrues to the transferor.

5 For the purposes of Chapter 4 of Part 5 of the Corporation Tax Act 2009 (loan relationships: continuity of treatment on transfers within groups or on reorganisations) the transferor and transferee are to be treated in relation to a relevant transfer as if, for the purposes of the transfer, they were members of the same group.

6 (1) For the purposes of Part 8 of the Corporation Tax Act 2009 (intangible fixed assets) a relevant transfer of a chargeable intangible asset is to be treated as tax-neutral.

(2) Part 4 of the Taxation (International and Other Provisions) Act 2010 (transfer pricing) does not apply in relation to a transfer to which sub-paragraph (1) applies.

(3) For the purposes of section 882 of the Corporation Tax Act 2009 (application of Part 8 to assets created or acquired on or after 1 April 2002) assets acquired by a transferee on a relevant transfer are to be treated as if they were acquired from a person who at the time of the acquisition was a related party.

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Transfers of securities of original holding company or its subsidiaries

- 7 (1) This paragraph applies where—
- (a) there is a disposal of securities of the original holding company or any of its subsidiaries, and
 - (b) immediately before the disposal, the original holding company or (as the case may be) the subsidiary was a 51% subsidiary of the Crown.
- (2) The degrouping provisions are not to apply by reason of the disposal or any agreement to make the disposal (if they otherwise would).
- (3) For the purposes of this paragraph “51% subsidiary” has the same meaning as it has for the purposes of the Corporation Tax Acts (see Chapter 3 of Part 24 of the Corporation Tax Act 2010), but—
- (a) the Crown is to be treated as a body corporate, and
 - (b) for the purpose of determining beneficial ownership the making of an agreement to make the disposal is to be ignored.
- 8 (1) This paragraph applies where—
- (a) paragraph 7 has applied at any time in relation to a disposal or an agreement to make a disposal,
 - (b) there is a subsequent disposal of securities of the original holding company or any of its subsidiaries in relation to which paragraph 7 does not apply, and
 - (c) immediately before the subsequent disposal or the making of an agreement to make it, the original holding company or (as the case may be) the subsidiary was a member of a new group.
- (2) For the purposes of the application of a degrouping provision in the case of that disposal or agreement—
- (a) the company from which the original holding company or (as the case may be) the subsidiary acquired relevant assets or chargeable interests is to be treated as if it had been a member of the new group at the time the relevant assets or chargeable interests were acquired, and
 - (b) that company is to be treated as if it were a member of the new group immediately before the disposal or the making of the agreement mentioned in sub-paragraph (1)(c).
- (3) “Relevant assets or chargeable interests” means assets or chargeable interests in relation to which, but for paragraph 7, the degrouping provision in question would have applied by reason of the disposal or agreement mentioned in sub-paragraph (1)(a).
- (4) In this paragraph—
- (a) references to a group have the same meaning as in the degrouping provision in question, and
 - (b) references to a new group are to a group other than a group of which the original holding company or (as the case may be) the subsidiary was a member immediately before the making of a disposal or an agreement in relation to which paragraph 7 applied.

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SCHEDULE 3

Sections 38 and 50

FURTHER PROVISION ABOUT ACCESS CONDITIONS

PART 1

PROVISION THAT MAY BE MADE BY ACCESS CONDITIONS

Introduction

- 1 Access conditions imposed on a person may include provision of the kind mentioned in the following provisions of this Part of this Schedule.

Terms of access

- 2 An access condition imposed on a person may include provision—
- (a) requiring the terms and conditions on which the person is willing to offer access to include such terms and conditions as may be specified or described in the condition, or
 - (b) requiring the person to make such modifications as OFCOM may direct of any offer which sets out the terms and conditions on which the person is willing to offer access.

Price controls etc.

- 3 (1) An access condition imposed on a person may include provision imposing on the person—
- (a) such price controls as OFCOM may direct in relation to matters connected with the giving of access (“access matters”),
 - (b) rules made by OFCOM in relation to access matters about the identification of costs and cost orientation,
 - (c) rules made by OFCOM for those purposes about the use of cost accounting systems,
 - (d) obligations to have compliance with those systems audited annually by a qualified independent auditor, and
 - (e) obligations to adjust prices in accordance with directions given by OFCOM.
- (2) An obligation within sub-paragraph (1)(d) may require the person to meet the costs of the audit.
- (3) In sub-paragraph (1)(d) “qualified independent auditor” means a person who—
- (a) is eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006, and

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(b) if the appointment were an appointment as a statutory auditor, would not be prohibited from acting by section 1214 of that Act (independence requirement).

4 An access condition may include provision requiring the application of presumptions in the fixing and determination of costs and charges for the purposes of the price controls, rules and obligations referred to in paragraph 3.

5 (1) If an access condition imposes rules on any person about the use of cost accounting systems, OFCOM may secure that the condition also imposes an obligation on the person to make arrangements for a description to be made available to the public of the cost accounting system used.

(2) If OFCOM impose an obligation on a person under sub-paragraph (1), the description of information to be made available must include details of—

- (a) the main categories under which costs are brought into account for the purposes of that system, and
- (b) the rules applied for the purposes of that system with respect to the allocation of costs.

Arrangements for provision of services by others

6 (1) This paragraph applies if—

- (a) services are provided to a postal operator pursuant to arrangements made between the operator and another person (“B”),
- (b) an access condition requires the operator to secure that those services are also provided to a third person (“C”), and
- (c) the provisions of the arrangements are such that the operator cannot secure that the services are provided to C without B's agreement.

(2) The access condition may include—

- (a) provision in relation to the giving of agreement by B (including provision for agreement to be deemed to be given in circumstances specified in the condition), and
- (b) provision for determining the terms and conditions on which B is to secure the provision of the services to C.

(3) Provision may not be included in an access condition as a result of this paragraph if it would have the effect of requiring a person who provides services pursuant to the arrangements to do more than the person could be required to do pursuant to the arrangements as they have effect before the condition is imposed.

Separation for accounting purposes

7 An access condition requiring a separation for accounting purposes between different matters may include provision—

- (a) requiring the separation to be maintained in relation to different services, facilities or products or in relation to services, facilities or products provided in different areas, and
- (b) requiring particular accounting methods to be used in maintaining the separation.

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Restriction on use of information obtained in connection with giving access

- 8 An access condition imposed on a person may include provision requiring the person not to use information which—
- (a) is obtained in connection with the giving of access, and
 - (b) relates to the provision of postal services by any person to whom access is given,
- for any purpose other than the purpose of the access given by the condition.

Periods for compliance

- 9 An access condition imposed on a person may include provision for securing that obligations contained in the condition are complied with within the periods or at the times required by or under the condition.

Dealing with requests for access

- 10 An access condition imposed on a person may include provision for securing fairness and reasonableness in the way in which requests for access are made and responded to.

Non-discrimination

- 11 An access condition imposed on a person may include provision requiring the person not to discriminate unduly against particular persons, or against a description of persons, in relation to access matters.

Transparency

- 12 An access condition imposed on a person may include provision requiring the person—
- (a) to publish all such information as OFCOM may direct (in such manner as they may direct) for the purpose of securing transparency in relation to access matters, or
 - (b) to publish (in such manner as OFCOM may direct) the terms and conditions on which the person is willing to offer access.

PART 2

RESOLUTION OF ACCESS DISPUTES BY OFCOM

Reference of disputes to OFCOM

- 13 (1) Any one or more parties to an access dispute may refer the dispute to OFCOM.
- (2) In this paragraph “access dispute” means a dispute between postal operators, or between a postal operator and a user of postal services, about the terms and conditions (including those as to price) on which access, required by virtue of an access condition to be given—
- (a) is to be or may be provided,
 - (b) is being provided, or

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(c) has been provided.

- (3) A reference under this paragraph must be made in such manner as OFCOM require.
- (4) A requirement under sub-paragraph (3) is to be imposed, withdrawn or modified by OFCOM publishing a notice in such manner as they consider appropriate for bringing the requirement, withdrawal or modification to the attention of persons who, in their opinion, are likely to be affected by it.
- (5) Different requirements may be imposed for different cases.

OF COM to decide whether to handle dispute

- 14 (1) This paragraph applies where a dispute has been referred to OFCOM under paragraph 13.
- (2) OFCOM must decide whether it is appropriate for them to handle the dispute.
- (3) As soon as possible after they have reached a decision, OFCOM must inform each of the parties to the dispute of—
 - (a) their decision,
 - (b) the date it was made, and
 - (c) their reasons for it.

Resolution of disputes by OFCOM

- 15 (1) This paragraph applies if OFCOM have decided under paragraph 14 that it is appropriate for them to handle a dispute.
- (2) OFCOM must—
 - (a) consider the dispute, and
 - (b) make a determination for resolving it.
- (3) The determination must be made as soon as reasonably practicable.
- (4) A determination binds all of the parties to the dispute.
- (5) Where there has been an attempt to resolve the dispute by other means—
 - (a) OFCOM may, in making their determination, take account of decisions made by others in the course of that attempt, and
 - (b) the determination may include provision ratifying any of those decisions.

Resolution of disputes: OFCOM's powers

- 16 (1) The powers that may be exercised by OFCOM, on the making of a determination under paragraph 15, are those listed in sub-paragraph (2).
- (2) The powers are—
 - (a) to make a declaration setting out the rights and obligations of parties to the dispute,
 - (b) to give a direction fixing the terms or conditions of transactions between parties to the dispute,

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- (c) to give a direction imposing an obligation, enforceable by the parties, to enter into a transaction between themselves on the terms and conditions fixed by OFCOM,
- (d) to give a direction, enforceable by the party to whom the sums are to be paid, requiring the payment of sums by way of adjustment of an underpayment or overpayment (but see sub-paragraph (3)),
- (e) to require a party to the dispute to pay all or part of another party's costs and expenses incurred in connection with the dispute,
- (f) to require a party to pay all or part of OFCOM's costs of dealing with the dispute (but see sub-paragraph (4)).

(3) A direction under sub-paragraph (2)(d) may be given only for the purpose of giving effect to a determination by OFCOM of the proper amount of a charge in respect of which amounts have been paid by one party to the dispute to another.

(4) A direction under sub-paragraph (2)(f) may be given to a party only if—

- (a) the party referred the dispute to OFCOM, and
- (b) OFCOM consider that the reference was frivolous or vexatious or that the party has otherwise abused the right (conferred by paragraph 13) to refer disputes.

Resolution of disputes: procedure

- 17 (1) The procedure for the consideration and determination of a dispute is the procedure that OFCOM consider appropriate.
- (2) That procedure may involve allowing the continuation of a procedure that has already begun for resolving the dispute by other means.
- (3) OFCOM must send a copy of their determination, together with a full statement of their reasons for it, to every party to the dispute.
- (4) OFCOM must publish so much of their determination as (having regard in particular to the need to preserve commercial confidentiality) they consider it appropriate to publish.
- (5) Information published under sub-paragraph (4) must be published in such manner as OFCOM consider appropriate for bringing it to the attention (to the extent that they consider appropriate) of members of the public.

Reference not to affect legal proceedings or OFCOM's powers

- 18 (1) A reference under paragraph 13 of a dispute does not prevent any person from bringing or continuing any civil or criminal proceedings in or before a court with respect to any of the matters under dispute.
- (2) Sub-paragraph (1) is subject to—
- (a) paragraph 15(4) (determination binding on all parties), and
 - (b) any agreement to the contrary.
- (3) Any reference of a dispute to OFCOM, or consideration or determination by OFCOM of a dispute, does not prevent OFCOM from exercising any of their powers (or from doing anything in connection with the exercise of any of their powers) in relation to the subject-matter of the dispute.

Status: Point in time view as at 13/06/2011.

Changes to legislation: There are currently no known outstanding effects for the Postal Services Act 2011. (See end of Document for details)

Information

- 19
- (1) This paragraph applies where a dispute has been referred under paragraph 13 to OFCOM.
 - (2) OFCOM may require a person to provide them with specified information, in the specified manner and within the specified period.
 - (3) The information that may be specified is information required by OFCOM for the purpose of—
 - (a) deciding whether it is appropriate for them to handle the dispute, or
 - (b) considering the dispute and making a determination under paragraph 15.
 - (4) The specified period must be reasonable.
 - (5) In fixing that period, OFCOM must have regard, in particular, to—
 - (a) the information that is required,
 - (b) the nature of the dispute, and
 - (c) the obligation imposed by paragraph 15(3) (obligation to make a determination as soon as reasonably practicable).
 - (6) Part 2 of Schedule 8 (information: enforcement) applies in relation to a requirement imposed under this paragraph as if—
 - (a) the requirement were imposed under paragraph 1 of that Schedule, and
 - (b) sub-paragraphs (4) and (5) of paragraph 5 of that Schedule were omitted.

SCHEDULE 4

Section 43

RECOVERY OF ADMINISTRATIVE CHARGES INCURRED BY OFCOM

Fixing of charges

- 1
- (1) If, at any time in a charging year, a postal operator provides a service within the scope of the universal postal service, the operator must, in respect of the service, pay to OFCOM the administrative charge (if any) that is fixed by OFCOM as applicable to the operator.
 - (2) OFCOM may fix the administrative charge for a charging year only if—
 - (a) at the time the charge is fixed there is in force a statement by OFCOM of the principles that they are proposing to apply in fixing charges under this paragraph for that year, and
 - (b) the charge is fixed in accordance with those principles.
 - (3) Those principles must be such as appear to OFCOM to be likely to secure, on the basis of such estimates of the likely costs as it is practicable for them to make, that—
 - (a) on a year-by-year basis the total amount of the charges payable to OFCOM is sufficient to meet, but does not exceed, the annual cost to OFCOM of carrying out their postal services functions,
 - (b) the cost of carrying out those functions is met by the imposition of charges that are objectively justifiable and proportionate to the matters in respect of which they are imposed, and

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Changes to legislation: There are currently no known outstanding effects for the Postal Services Act 2011. (See end of Document for details)

- (c) the relationship between meeting the cost of carrying out those functions and the amounts of the charges is transparent.
- (4) OFCOM's power to fix charges for a particular case includes—
- (a) power to provide that the charges are to be equal to the amounts produced by a computation made in the manner, and by reference to the factors, specified by them,
 - (b) power to provide for different charges to be imposed on different descriptions of persons,
 - (c) power to provide for particular descriptions of persons to be excluded from the liability to pay charges.
- (5) As soon as reasonably practicable after the end of each charging year, OFCOM must publish a statement (a “financial statement”) setting out for that year—
- (a) the total amount of the charges for that year that they have received,
 - (b) the total amount of the charges for that year that remain outstanding but are likely to be paid or recovered, and
 - (c) the cost to OFCOM of carrying out their postal services functions.
- (6) Any deficit or surplus shown (after applying this sub-paragraph for previous years) by a financial statement is to be carried forward and taken into account in determining what is required to satisfy the requirement imposed by virtue of sub-paragraph (3)
- (a) in relation to the following year.
- (7) For the purposes of this paragraph “charging year” means—
- (a) the period beginning with the commencement of this Schedule and ending with the next 31 March, or
 - (b) any subsequent period of 12 months beginning with 1 April.

Meaning of OFCOM's postal services functions

- 2 (1) For the purposes of paragraph 1 OFCOM's postal services functions are—
- (a) functions that OFCOM carry out under, or in consequence of, any enactment relating to postal services (including one contained in this Schedule),
 - (b) securing international co-operation in relation to the regulation of postal services,
 - (c) market analysis and any monitoring of the controls operating in the market for the provision of postal services,
 - (d) the carrying out for a relevant purpose of any research by OFCOM or the Consumer Panel into any of the matters mentioned in section 14(6A)(b) to (e) of the Communications Act 2003 (as inserted by Schedule 12 to this Act),
 - (e) the publication under section 26 of that Act of any information or advice that appears to OFCOM to be appropriate to make available to users of postal services, and
 - (f) any incidental functions carried out in relation to any of the above functions.
- (2) In sub-paragraph (1)(d) “a relevant purpose” means the purpose of ascertaining the effectiveness of one or more of the following—
- (a) the regulation of the provision of postal services,
 - (b) the mechanisms in place for the handling by postal operators of complaints made about them by the users of postal services, and

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Changes to legislation: There are currently no known outstanding effects for the Postal Services Act 2011. (See end of Document for details)

- (c) the mechanisms in place for resolving disputes between postal operators and the users of postal services.
- (3) In sub-paragraph (1)(f) the reference to incidental functions carried out in relation to any of the functions within sub-paragraph (1)(a) to (e) includes the taking of any steps that OFCOM consider necessary—
- (a) in preparation for the carrying out of any of those functions, or
 - (b) for the purpose of facilitating the carrying out of those functions or otherwise in connection with carrying them out.
- (4) In sub-paragraph (3) the reference to the taking of any steps includes the taking of any steps before the commencement of this Schedule.

Procedure for fixing of charges

- 3
- (1) The way in which a charge is to be fixed under paragraph 1 is by the publication or giving of such notification as OFCOM consider appropriate for bringing the charge to the attention of the persons who, in their opinion, are likely to be affected by it.
 - (2) OFCOM may set out in that notification the time at which the charge is to become due to them.
 - (3) A charge fixed under paragraph 1 for a charging year may be fixed in terms providing for a deduction from the charge on a proportionate basis to be made for a part of the year during which the service in respect of which it is fixed is not provided by the person otherwise liable to the charge.
 - (4) A charge fixed under paragraph 1 for a charging year may also be fixed so that (subject to sub-paragraph (5)) it is referable, in whole or in part, to the provision of a service during a part of the year falling before the fixing of the charge.
 - (5) A charge may be fixed so as to be referable to a time before it is fixed to the extent only that both—
 - (a) the imposition of the charge, and
 - (b) the amount of the charge,are required by, and consistent with, the statement of charging principles in force at the beginning of the charging year.
 - (6) Before making or revising a statement of charging principles, OFCOM must consult such of the persons who, in OFCOM's opinion, are likely to be affected by those principles as they think fit.
 - (7) The way in which a statement of charging principles must be made or may be revised is by the publication of the statement or revised statement in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.

Notification of non-payment of charges

- 4
- (1) OFCOM may bring proceedings for the recovery from a person of an administrative charge fixed for a year under paragraph 1 only if they have given that person a notification under this paragraph with respect to the amount they are seeking to recover.

Status: Point in time view as at 13/06/2011.

Changes to legislation: There are currently no known outstanding effects for the Postal Services Act 2011. (See end of Document for details)

- (2) OFCOM may give a person a notification under this paragraph if they determine that there are reasonable grounds for believing that the person is in contravention of a requirement to pay the charge (whether the whole or part of it).
 - (3) A notification under this paragraph must set out the determination made by OFCOM.
 - (4) A notification under this paragraph must also specify the period during which the person notified has an opportunity—
 - (a) to make representations about the notified determination, and
 - (b) to pay the unpaid charge or (if applicable) the amount outstanding.
 - (5) The specified period must be at least one month beginning with the day after the day the notification is given unless—
 - (a) OFCOM and the person notified agree a shorter period, or
 - (b) OFCOM have reasonable grounds for believing that the contravention is a repeated contravention and, in those circumstances, consider a shorter period would be appropriate.
 - (6) A contravention is a repeated contravention, in relation to a notification with respect to the contravention, if—
 - (a) a previous notification has been given in respect of the same contravention or in respect of another contravention of a requirement to pay an administrative charge, and
 - (b) the subsequent notification is given no more than 12 months after the day on which OFCOM determine for the purposes of paragraph 6(2) that the contravention to which the previous notification related did occur.
 - (7) OFCOM may (on one or more occasions) extend the specified period.
- 5
- (1) A notification under paragraph 4—
 - (a) may be given in respect of contraventions of more than one requirement to pay an administrative charge, and
 - (b) if it is given in respect of a continuing contravention, may be given in respect of any period during which the contravention has continued.
 - (2) If a notification under paragraph 4 has been given to a person in respect of an amount outstanding, OFCOM may give a further notification in respect of the whole or a part of that amount only if—
 - (a) the subsequent notification is in respect of so much of a period during which that amount was outstanding as falls after a period to which the earlier notification relates, or
 - (b) the earlier notification has been withdrawn without a penalty having been imposed in respect of the matters notified.

Penalties for non-payment of charges

- 6
- (1) This paragraph applies if—
 - (a) a person has been given a notification under paragraph 4,
 - (b) OFCOM have allowed the person an opportunity of making representations about the notified determination, and
 - (c) the period allowed for the making of the representations has ended.
 - (2) OFCOM may impose a penalty on the person if the person—

Status: Point in time view as at 13/06/2011.

Changes to legislation: There are currently no known outstanding effects for the Postal Services Act 2011. (See end of Document for details)

- (a) has, in one or more of the respects notified, been in contravention of a requirement to pay an administrative charge fixed under paragraph 1, and
 - (b) has not, during the period allowed under paragraph 4, paid the whole of the notified amount outstanding.
- (3) If a notification under paragraph 4 relates to more than one contravention, a separate penalty may be imposed in respect of each contravention.
- (4) If a notification under that paragraph relates to a continuing contravention, no more than one penalty may be imposed in respect of the period of contravention specified in the notification.
- (5) The amount of a penalty imposed under this paragraph is to be such amount as OFCOM determine to be—
 - (a) appropriate, and
 - (b) proportionate to the contravention in respect of which it is imposed.
- (6) The amount must not be more than twice the amount of the charge fixed for the year in relation to which the contravention occurred.
- (7) In making the determination of the amount of the penalty OFCOM must have regard to—
 - (a) any representations made to them by the person, and
 - (b) any steps taken by the person towards paying the amounts that the person was notified under paragraph 4 were outstanding.
- (8) If OFCOM impose a penalty on a person under this paragraph, they must—
 - (a) within one week of making their decision to impose the penalty, notify that person of that decision and of their reasons for it, and
 - (b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid.
- (9) A penalty imposed under this paragraph—
 - (a) must be paid to OFCOM, and
 - (b) if not paid within the period fixed by them, is to be recoverable by them accordingly.
- (10) This paragraph does not affect OFCOM's power to bring proceedings (whether before or after the imposition of a penalty under this paragraph) for the recovery of the whole or part of an amount due to them under paragraph 1.

Suspending service provision for non-payment

- 7
- (1) OFCOM may give a direction under this paragraph to any postal operator who is providing one or more postal services (“the contravening operator”).
 - (2) A direction under this paragraph is a direction that the entitlement of the contravening operator to provide postal services—
 - (a) is suspended (either generally or in relation to particular services), or
 - (b) is restricted in the respects set out in the direction.
 - (3) OFCOM may give a direction under this paragraph only if they are satisfied that conditions A to D are met.

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Changes to legislation: There are currently no known outstanding effects for the Postal Services Act 2011. (See end of Document for details)

- (4) Condition A is that the contravening operator is or has been in serious and repeated contravention of requirements to pay administrative charges fixed under paragraph 1 (whether in respect of the whole or a part of the charges).
- (5) Condition B is that the bringing of proceedings for the recovery of the amounts outstanding—
- (a) has failed to secure complete compliance by the contravening operator with the requirements to pay the charges, or
 - (b) has no reasonable prospect of securing such compliance.
- (6) Condition C is that an attempt, by the imposition of penalties under paragraph 6, to secure such compliance has failed.
- (7) Condition D is that the giving of the direction is—
- (a) appropriate, and
 - (b) proportionate to the seriousness (when repeated as they have been) of the contraventions.
- 8 (1) Unless it provides otherwise, a direction under paragraph 7 takes effect for an indefinite period beginning with the time at which it is notified to the person to whom it is given.
- (2) A direction under paragraph 7—
- (a) in providing for the effect of a suspension or restriction to be postponed may provide for it to take effect only at a time determined by or in accordance with the terms of the direction, and
 - (b) in connection with the suspension or restriction contained in the direction or with the postponement of its effect, may impose such conditions on the contravening operator as appear to OFCOM to be appropriate for the purpose of protecting the users of that operator's services.
- (3) Those conditions may include a condition requiring the making of payments—
- (a) by way of compensation for loss or damage suffered by those users as a result of the direction, or
 - (b) in respect of annoyance, inconvenience or anxiety to which those users have been put in consequence of the direction.
- (4) OFCOM are not to give a direction under paragraph 7 unless they have—
- (a) notified the contravening operator of the proposed direction and of the conditions (if any) which they are proposing to impose by that direction,
 - (b) provided the contravening operator with an opportunity of making representations about the proposals and of proposing steps for remedying the situation, and
 - (c) considered every representation and proposal made to them during the period allowed by them for the contravening operator to take advantage of that opportunity.
- (5) That period must be at least one month beginning with the day after the day the notification is given.
- (6) OFCOM may revoke a direction under paragraph 7 or modify its conditions—
- (a) with effect from such time as they may direct,
 - (b) subject to compliance with such requirements as they may specify, and

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- (c) to such extent and in relation to such services, or parts of a service, as they may determine.
- (7) For the purposes of paragraph 7 there are repeated contraventions by a person of requirements to pay administrative charges to the extent that—
- (a) in the case of a previous notification given to that person under paragraph 4, OFCOM have determined for the purposes of paragraph 6(2) that a contravention did occur, and
 - (b) in the period of 12 months following the day of the making of that determination, one or more further notifications have been given to that person in respect of the same or different failures to pay administrative charges.

Enforcement of directions under paragraph 7

- 9 (1) A person commits an offence if the person provides any service—
- (a) while the person's entitlement to do so is suspended by a direction under paragraph 7, or
 - (b) in contravention of a restriction contained in a direction under that paragraph.
- (2) A person guilty of an offence under sub-paragraph (1) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum, and
 - (b) on conviction on indictment, to a fine.
- (3) The duty of a person to comply with a condition of a direction under paragraph 7 is to be a duty owed to every person who may be affected by a contravention of the condition.
- (4) Sub-paragraphs (5) and (6) apply where a duty is owed by virtue of sub-paragraph (3) to a person.
- (5) A breach of the duty that causes that person to sustain loss or damage is actionable at the suit or instance of that person.
- (6) An act which—
- (a) by inducing a breach of the duty or interfering with its performance, causes that person to sustain loss or damage, and
 - (b) is done wholly or partly for achieving that result,
- is actionable at the suit or instance of that person.
- (7) In proceedings brought against a person as a result of sub-paragraph (5) it is a defence for that person to show that the person took—
- (a) all reasonable steps, and
 - (b) exercised all due diligence,
- to avoid contravening the condition in question.

Status: Point in time view as at 13/06/2011.

Changes to legislation: There are currently no known outstanding effects for the Postal Services Act 2011. (See end of Document for details)

VALID FROM 01/10/2011

SCHEDULE 5 Section 52

APPROVAL OF REDRESS SCHEMES

.....

VALID FROM 01/10/2011

SCHEDULE 6 Section 53

IMPOSITION, MODIFICATION OR REVOCATION OF REGULATORY CONDITIONS

.....

VALID FROM 01/10/2011

SCHEDULE 7 Section 54

ENFORCEMENT OF REGULATORY REQUIREMENTS

.....

VALID FROM 01/10/2011

SCHEDULE 8 Section 55

INFORMATION PROVISIONS

.....

SCHEDULE 9 Section 66

TRANSITIONAL PROVISIONS FOR PART 3

Introduction

1 In this Schedule—

Status: Point in time view as at 13/06/2011.

Changes to legislation: There are currently no known outstanding effects for the Postal Services Act 2011. (See end of Document for details)

“the appointed day” means the day appointed under section 93(3) as the day on which the provisions of Part 3 come generally into force,

“Postcomm” means the Postal Services Commission,

“the transitional period” means the period beginning with the day on which this Act is passed and ending immediately before the appointed day, and

“the 2000 Act” means the Postal Services Act 2000.

The universal postal service

- 2 (1) Until the first universal postal service order under section 30 comes into force—
- (a) references in Part 3 to a universal postal service are to be read as references to a universal postal service as defined by section 4(1) and (2) of the 2000 Act, and
 - (b) references in Part 3 to services within the scope of the universal postal service are to be read as references to services that immediately before the appointed day were, according to section 7A of the 2000 Act, not outside the scope of the universal postal service in the United Kingdom.
- (2) Section 29 (duty to secure provision of universal postal service) is to have effect during the transitional period as if the references in that section (other than in subsection (2)) to OFCOM included Postcomm.

Provisional designation of universal service providers

- 3 (1) OFCOM may before the appointed day designate provisionally, with effect from that date, one or more postal operators as universal service providers.
- (2) A provisional designation must be—
- (a) notified to the person designated,
 - (b) published in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it, and
 - (c) notified to the European Commission.
- (3) Whilst in force a provisional designation has the same effect as designation under section 35.
- (4) A provisional designation ceases to have effect on the making of the first designation under that section.

Regulatory conditions applicable as from appointed day

- 4 (1) OFCOM must determine before the end of the transitional period what regulatory conditions (“initial conditions”) are to apply to postal operators on and after the appointed day.
- (2) Except as mentioned below, the initial conditions applicable to—
- (a) universal service providers, and
 - (b) other postal operators,

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- must be to substantially the same effect as the licence conditions applying immediately before the appointed day to the universal service provider or (as the case may be) in relation to the corresponding description of operator.
- (3) Sub-paragraph (2) does not apply to consumer protection conditions (and, accordingly, references elsewhere in this Schedule to initial conditions do not include consumer protection conditions).
- (4) If it appears to OFCOM to be unnecessary to maintain any provision made by the existing licence conditions, sub-paragraph (2) does not require OFCOM to replicate that provision in the initial conditions.
- (5) The provisions of Part 3 as to what regulatory conditions may be imposed—
- (a) have effect subject to sub-paragraph (2) in their application to the imposition of initial conditions, and
 - (b) do not apply in relation to the modification of initial conditions.
- 5 (1) This paragraph applies to licence conditions—
- (a) which apply immediately before the appointed day to the universal service provider or other postal operators, and
 - (b) which contain provision of a kind that (but for this paragraph) could not be contained in any regulatory condition under Part 3.
- (2) The provision made by those licence conditions is to be regarded for the purposes of Part 3 as being capable of being imposed by a regulatory condition under that Part (to be known as a “transitory condition”).
- (3) Accordingly—
- (a) the references in paragraph 4 to initial conditions include transitory conditions, and
 - (b) paragraph 4(2) and(4) apply in relation to those licence conditions as they apply in relation to other licence conditions.
- (4) A transitory condition is (as a result of this sub-paragraph) to be treated as revoked at the time when the first universal postal service order under section 30 comes into force.
- 6 (1) If OFCOM modify the initial conditions, they may not impose any conditions that could not have been imposed under Part 2 of the 2000 Act.
- (2) The provisions of Part 3 about—
- (a) the procedure for imposing, modifying or revoking regulatory conditions,
 - (b) the enforcement of regulatory conditions, and
 - (c) appeals,
- apply to initial conditions as to other regulatory conditions.
- (3) Any decision of OFCOM pursuant to paragraph 4(2) is not to be regarded as an initial price control decision for the purposes of section 59.
- (4) This paragraph applies in relation to transitory conditions as it applies in relation to other initial conditions, except that sub-paragraph (2)(a) does not apply in relation to the revocation of a transitory condition.

Status: Point in time view as at 13/06/2011.

Changes to legislation: There are currently no known outstanding effects for the Postal Services Act 2011. (See end of Document for details)

Recovery of administrative charges incurred by OFCOM

- 7
- (1) This paragraph applies in relation to the first charging year under Schedule 4 (recovery of administrative charges incurred by OFCOM).
 - (2) OFCOM must prepare a statement of the principles that they are proposing to apply in fixing administrative charges under paragraph 1 of that Schedule for that year (and the charges must be fixed in accordance with those principles), but there is no requirement for the statement to be in force at the beginning of that year or at the time the charges are fixed.
 - (3) Sub-paragraph (2) has effect instead of paragraph 1(2) of that Schedule.
 - (4) Paragraph 3(5) of that Schedule has effect as if the reference to the statement of charging principles in force at the beginning of the charging year were a reference to the statement of charging principles relating to the charging year.

Power to extend operation of time-limited licence condition

- 8
- (1) This paragraph applies if it appears to the Secretary of State—
 - (a) that a licence condition applicable before the appointed day to the universal service provider depends for its continuing operation on forecast figures indicating the volume of business in future periods (“index years”) set out in the condition, and
 - (b) that the index years and forecast figures set out in the condition do not extend beyond the index year ending 31 March 2011.
 - (2) The Secretary of State may by order amend that condition so as to specify a forecast figure for the index year ending 31 March 2012.
 - (3) The power of the Secretary of State is limited to inserting a forecast figure produced by applying the same methods as were used by Postcomm to determine the forecast figure for the index years presently set out in the condition.
 - (4) If it appears to the Secretary of State that Postcomm has produced, using those methods, a forecast figure for the index year ending 31 March 2012, the Secretary of State may adopt its figure and need not repeat, or examine the basis of, the work done by it in producing that figure.
 - (5) Before making an order under this paragraph the Secretary of State must—
 - (a) consult the universal service provider and such other persons as the Secretary of State considers appropriate, and
 - (b) consider any representations made before the end of the consultation period.
 - (6) The consultation period, in relation to a person, is the period of 21 days beginning with the day on which the person is consulted.
 - (7) The requirements of sub-paragraph (5) may be met by consultation and consideration before the passing of this Act.
 - (8) If an order under this paragraph is made before the appointed day, the reference in paragraph 4(2) to the licence conditions applicable immediately before that day is to be read accordingly as a reference to the conditions as amended by the order.

Status: Point in time view as at 13/06/2011.

Changes to legislation: There are currently no known outstanding effects for the Postal Services Act 2011. (See end of Document for details)

Anticipatory exercise of powers

- 9 (1) During the transitional period the provisions of Part 3 relating to—
- (a) the designation of a universal service provider, and
 - (b) the imposition of regulatory conditions on postal operators,
- have effect so far as necessary to enable OFCOM to undertake work with a view to making a designation, or imposing regulatory conditions, under that Part as soon as practicable on or after the appointed day.
- (2) The work referred to in sub-paragraph (1) includes, in particular, consultation with existing licensed operators and others in connection with the imposition of regulatory conditions.
- 10 The provisions of Part 3 also come into force at the beginning of the transitional period so far as necessary to enable the making of any regulations, order or scheme by OFCOM or the Secretary of State.
- 11 (1) The provisions of section 55 and Schedule 8 (information) have effect during the transitional period so far as necessary for the purposes of the carrying out by OFCOM of their functions during or after that period.
- (2) The provisions of section 56 (general restriction on disclosure of information) have effect accordingly.

Reliance by OFCOM on work done by Postcomm

- 12 In carrying out any of their functions under Part 3 OFCOM may rely on anything done by or in relation to Postcomm at any time before the passing of this Act.

Consultation on exercise of existing regulatory functions

- 13 During the transitional period Postcomm must consult OFCOM before taking any step with a view to modifying or revoking the conditions of a licence under Part 2 of the 2000 Act.

Enforcement action by Postcomm etc

- 14 (1) This paragraph applies to a contravention of a condition of a licence under Part 2 of the 2000 Act in respect of which Postcomm was in the process of doing something immediately before the day on which paragraph 3 of Schedule 12 comes into force (repeal of Part 2 of 2000 Act).
- (2) OFCOM are to have the power to do anything that they consider appropriate to do in relation to the contravention in question.
- (3) In particular, OFCOM may continue or discontinue any legal proceedings under section 30 of the 2000 Act (financial penalties) begun by Postcomm in respect of the contravention in question.
- (4) References in this paragraph to a contravention include anything that Postcomm considered might be a contravention.
- 15 (1) This paragraph applies if, at any time on or after the day on which paragraph 3 of Schedule 12 comes into force, OFCOM are satisfied that a person has contravened a condition of a licence under Part 2 of the 2000 Act.

Status: Point in time view as at 13/06/2011.

Changes to legislation: There are currently no known outstanding effects for the Postal Services Act 2011. (See end of Document for details)

- (2) Despite the repeal of that Part, OFCOM are to have—
- (a) the power to begin legal proceedings under section 30 of the 2000 Act in respect of the contravention in question, and
 - (b) the power to do anything else that they consider appropriate to do in relation to it.

References to universal service provider

- 16 References in this Schedule to the universal service provider, in relation to periods before the appointed day, are to the operator whose identity is for the time being notified to the European Commission as being the provider of a universal postal service in the United Kingdom.

Saving

- 17 Nothing in this Schedule is to be read as impliedly restricting the generality of the power to make transitional provision by order under section 93(4).

VALID FROM 01/10/2011

SCHEDULE 10

Section 73

CONDUCT OF POSTAL ADMINISTRATION

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VALID FROM 01/10/2011

SCHEDULE 11

Section 73

POSTAL TRANSFER SCHEMES

Application of Schedule

- 1 This Schedule applies if—
- (a) the court has made a postal administration order in relation to a company (the “old company”), and
 - (b) it is proposed that a relevant transfer (within the meaning of section 69(3)) be made to another company (or companies) (a “new company”).
- 2 While the order is in force, the postal administrator is to act on behalf of the old company in doing anything that it is authorised or required to do by or under this Schedule.

Status: Point in time view as at 13/06/2011.

Changes to legislation: There are currently no known outstanding effects for the Postal Services Act 2011. (See end of Document for details)

Making of postal transfer schemes

- 3
- (1) The old company may for the purpose of giving effect to the proposed transfer make a scheme (a “postal transfer scheme”) for the transfer of property, rights and liabilities from it to the new company (or companies).
 - (2) A postal transfer scheme has effect only if—
 - (a) the new company (or companies) have consented to the making of the scheme, and
 - (b) the Secretary of State has approved the scheme.
 - (3) A postal transfer scheme may be made only at a time when the postal administration order is in force in relation to the old company.
 - (4) A postal transfer scheme takes effect at the time specified in the scheme.
 - (5) In the case of a proposed transfer falling within section 69(4)(a) (transfer to wholly-owned subsidiary), sub-paragraph (2)(a) does not apply.

Approval and modification of scheme by Secretary of State

- 4
- (1) The Secretary of State may modify a postal transfer scheme before approving it.
 - (2) After a postal transfer scheme has taken effect—
 - (a) the Secretary of State may by notice to the old company and the new company (or companies) modify the scheme, and
 - (b) the scheme as modified is to be treated for all purposes as having come into force at the time specified under paragraph 3(4).
 - (3) The only modifications that may be made by the Secretary of State under this paragraph are ones—
 - (a) to which the old company and the new company (or companies) have consented, or
 - (b) in the case of a proposed transfer falling within section 69(4)(a), to which the old company has consented.
 - (4) In connection with giving effect to modifications under sub-paragraph (2), the Secretary of State may make incidental, supplementary, consequential, transitional, transitory or saving provision (and different provision may be made for different cases or circumstances).
 - (5) In deciding whether to approve or modify a postal transfer scheme, the Secretary of State must have regard to—
 - (a) the public interest, and
 - (b) any effect the scheme or modification is likely to have on the interests of persons other than the old company and a new company.
 - (6) Before approving or modifying a postal transfer scheme, the Secretary of State must consult OFCOM.
 - (7) The old company and the new company (or companies) each have a duty to provide the Secretary of State with any information or other assistance that the Secretary of State may reasonably require for the purposes of, or in connection with, the exercise of any power under this paragraph.

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- (8) That duty overrides a contractual or other requirement to keep information in confidence.
- (9) That duty is enforceable in civil proceedings by the Secretary of State—
- (a) for an injunction,
 - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or
 - (c) for any other appropriate remedy or relief.

Identification of property etc to be transferred

- 5 (1) A postal transfer scheme may identify the property, rights and liabilities to be transferred by specifying or describing them.
- (2) A postal transfer scheme may provide for the way in which property, rights or liabilities of any description are to be identified.

Property, rights and liabilities that may be transferred

- 6 (1) A postal transfer scheme may transfer—
- (a) property situated in any part of the world, and
 - (b) rights and liabilities arising (in any way) under the law of any country or territory.
- (2) The property, rights and liabilities that may be transferred by a postal transfer scheme include—
- (a) property, rights and liabilities acquired or arising after the scheme has been made but before the time at which it takes effect,
 - (b) rights and liabilities arising after that time in respect of matters occurring before that time, and
 - (c) property, rights and liabilities that would not otherwise be capable of being transferred or assigned.
- (3) The transfers to which effect may be given by a postal transfer scheme include ones that are to take effect as if there were no such contravention, liability or interference with any interest or right as there would otherwise be by reason of any provision having effect in relation to the terms on which the old company is entitled or subject to anything to which the transfer relates.
- (4) In sub-paragraph (3) the reference to any provision is a reference to any provision, whether under an enactment or agreement or otherwise.
- (5) Sub-paragraph (3) has effect where shares in a subsidiary of the old company are transferred as if the reference to the terms on which that company is entitled or subject to anything to which the transfer relates included a reference to the terms on which the subsidiary is entitled or subject to anything immediately before the transfer takes effect.

Dividing and modifying the old company's property, rights and liabilities

- 7 (1) A postal transfer scheme may contain provision—

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- (a) for the creation, in favour of the old company or a new company, of an interest or right in or in relation to property or rights transferred in accordance with the scheme,
 - (b) for giving effect to a transfer by the creation, in favour of a new company, of an interest or right in or in relation to property or rights retained by the old company, and
 - (c) for the creation of new rights and liabilities (including rights of indemnity and duties to indemnify) as between the old company and a new company.
- (2) A postal transfer scheme may contain provision for the creation of rights and liabilities for the purpose of converting arrangements between different parts of the old company's undertaking into a contract—
- (a) between different new companies, or
 - (b) between a new company and the old company.
- (3) A postal transfer scheme may contain provision—
- (a) for rights and liabilities to be transferred so as to be enforceable by or against more than one new company or by or against both the new company and the old company, and
 - (b) for rights and liabilities enforceable against more than one person in accordance with provision falling within paragraph (a) to be enforceable in different or modified respects by or against each or any of them.
- (4) A postal transfer scheme may contain provision for interests, rights or liabilities of third parties in relation to anything to which the scheme relates to be modified in the manner set out in the scheme.
- (5) The reference here to third parties is to persons other than the old company and a new company.
- (6) Paragraph 6(2)(c) and (3) apply to the creation of interests and rights as they apply to the transfer of interests and rights.

Transfer of regulatory conditions etc

- 8
- (1) A postal transfer scheme may contain provision—
 - (a) for a new company to be treated for all purposes as having been designated by OFCOM under section 35 as a universal service provider, and
 - (b) for the transfer to a new company of the whole or part of any obligation contained in a regulatory condition to which the old company was subject.
 - (2) The reference to the transfer of a part of any obligation includes the transfer of any obligation so far as relating to an area specified or described in provision made by the scheme.
 - (3) A postal transfer scheme may, in consequence of provision made under subparagraph (1), make modifications of regulatory conditions to which the old company or new company are subject.

Transfer etc of statutory functions

- 9
- (1) A postal transfer scheme may contain provision—
 - (a) for the transfer of relevant statutory functions to a new company, or

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- (b) for relevant statutory functions to be exercisable concurrently by the old company and a new company (or companies).
- (2) For this purpose “relevant statutory functions” means powers and duties conferred or imposed on the old company by or under an enactment so far as they are connected with—
 - (a) the undertaking of the old company to which the postal transfer scheme relates, or
 - (b) property, rights or liabilities transferred in accordance with the scheme.
- (3) Provision within sub-paragraph (1) may apply to relevant statutory functions so far as exercisable in an area specified or described in the provision.

Effect of postal transfer scheme: general

- 10 (1) At the time at which a postal transfer scheme takes effect—
- (a) the property, rights and liabilities to be transferred in accordance with the scheme, and
 - (b) the interests, rights and liabilities to be created in accordance with the scheme,
- are, as a result of this paragraph, to vest in the appropriate person.
- (2) For this purpose “the appropriate person” means—
- (a) in the case of property, rights and liabilities to be transferred, the new company (or companies), and
 - (b) in the case of interests, right and liabilities to be created, the person in whose favour, or in relation to whom, they are to be created.

Effect of postal transfer scheme on right to terminate or modify interest etc

- 11 (1) This paragraph applies where a person would otherwise be entitled, in consequence of anything done or likely to be done by or under this Act in connection with a postal transfer scheme—
- (a) to terminate, modify, acquire or claim an interest or right, or
 - (b) to treat an interest or right as modified or terminated.
- (2) The entitlement—
- (a) is not enforceable in relation to the interest or right until after the transfer of the interest or right by the scheme, and
 - (b) after that transfer, is enforceable in relation to the interest or right only in so far as the scheme contains provision for the interest or right to be transferred subject to whatever confers the entitlement.
- (3) Where shares in a subsidiary of the old company are transferred, sub-paragraph (2) has effect in relation to an interest or right of the subsidiary as if the references to the transfer of the interest or right included a reference to the transfer of the shares.

Supplementary provisions of postal transfer schemes

- 12 (1) A postal transfer scheme may—
- (a) contain incidental, supplementary, consequential, transitional, transitory or saving provision, and

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- (b) make different provision for different cases or circumstances.
- (2) Nothing in paragraphs 13 to 17 limits sub-paragraph (1).
- (3) In those paragraphs any reference to a transfer in accordance with a postal transfer scheme includes the creation in accordance with a postal transfer scheme of an interest, right or liability.
- 13 (1) A postal transfer scheme may provide, in relation to transfers in accordance with the scheme—
- (a) for a new company to be treated as the same person in law as the old company,
- (b) for agreements made, transactions effected or other things done by or in relation to the old company to be treated, so far as may be necessary for the purposes of or in connection with the transfers, as made, effected or done by or in relation to a new company,
- (c) for references in any document to the old company, or to an employee or office holder of it, to have effect, so far as may be necessary for the purposes of or in connection with any of the transfers, with such modifications as are specified in the scheme, and
- (d) for proceedings commenced by or against the old company to be continued by or against a new company.
- (2) In sub-paragraph (1)(c) “document” includes an agreement or instrument, but does not include an enactment.
- 14 (1) A postal transfer scheme may contain provision about—
- (a) the transfer of foreign property, rights and liabilities, and
- (b) the creation of foreign rights, interests and liabilities.
- (2) For this purpose property, or a right, interest or liability, is “foreign” if an issue relating to it arising in any proceedings would (in accordance with the rules of private international law) be determined under the law of a country or territory outside the United Kingdom.
- 15 (1) A postal transfer scheme may contain provision for and in connection with the payment of compensation to persons other than the old company and a new company if their property, rights, interests or liabilities have been affected by (or as a result of) a postal transfer scheme.
- (2) The provision may provide for the appointment of an arbitrator to determine disputes about compensation.
- 16 A postal transfer scheme may make provision for disputes as to the effect of the scheme—
- (a) between different new companies, or
- (b) between the old company and a new company,
- to be referred to such arbitration as may be specified in or determined under the scheme.
- 17 (1) This paragraph applies if, in consequence of a postal transfer scheme, a person (“P”) is entitled to possession of a document relating in part to the title to, or to the management of, land or other property.
- (2) If the land or other property is in England and Wales—

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- (a) the scheme may provide for P to be treated as having given another person an acknowledgement in writing of the other person's right to production of the document and to delivery of copies of it, and
 - (b) section 64 of the Law of Property Act 1925 (production and safe custody of documents) is to apply to the acknowledgement and is to apply on the basis that the acknowledgement does not contain an expression of contrary intention.
- (3) If the land or other property is in Scotland, section 16(1) of the Land Registration (Scotland) Act 1979 (omission of certain clauses in deeds) has effect in relation to the transfer as if—
- (a) the transfer had been effected by deed, and
 - (b) the words “unless specially qualified” were omitted from that subsection.
- (4) If the land or other property is in Northern Ireland—
- (a) the scheme may provide for P to be treated as having given another person an acknowledgement in writing of the other person's right to production of the document and to delivery of copies of it, and
 - (b) section 9 of the Conveyancing Act 1881 (which corresponds to section 64 of the 1925 Act) is to apply to the acknowledgement and is to apply on the basis that the acknowledgement does not contain an expression of contrary intention.

Proof of title by certificate

- 18 A certificate issued by the Secretary of State to the effect that any property, interest, right or liability vested (in accordance with a postal transfer scheme) in a person specified in the certificate at a time so specified is conclusive evidence of the matters so specified.

Staff

- 19 The Transfer of Undertakings (Protection of Employment) Regulations 2006 apply to a transfer (under a postal transfer scheme) of rights and liabilities under a contract of employment (whether or not the transfer would otherwise be a relevant transfer for the purposes of those regulations).
- 20 If an employee of the old company becomes an employee of a new company as a result of a postal transfer scheme—
- (a) a period of employment with the old company is to be treated as a period of employment with the new company, and
 - (b) the transfer to the new company is not to be treated as a break in service.

Transfers in case of foreign companies

- 21 (1) This paragraph applies if the old company is a foreign company.
- (2) The property, rights and liabilities which may be transferred by a postal transfer scheme, or in or in relation to which interests, rights or liabilities may be created by a postal transfer scheme, are confined to—
- (a) property of the old company in the United Kingdom,
 - (b) rights and liabilities arising in relation to its property in the United Kingdom, and

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- (c) rights and liabilities arising in connection with its affairs and business so far as carried on in the United Kingdom.

Transfers by two or more postal transfer schemes

- 22 (1) This paragraph applies if there are two or more postal transfer schemes making transfers to new companies.
- (2) Paragraph 7 has effect as if—
- (a) in sub-paragraph (1)(a) the reference to property or rights transferred in accordance with a postal transfer scheme included property or rights transferred in accordance with another postal transfer scheme, and
 - (b) in sub-paragraphs (2)(a) and (3) references to a new company included a company that is a new company for the purposes of another postal transfer scheme.
- (3) Accordingly, in relation to anything done by a postal transfer scheme as a result of this paragraph, any reference to a new company in paragraphs 13 to 16 includes a company that is a new company for the purposes of another postal transfer scheme.

VALID FROM 01/10/2011

SCHEDULE 12

Section 91

MINOR AND CONSEQUENTIAL AMENDMENTS

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Status:

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Changes to legislation:

There are currently no known outstanding effects for the Postal Services Act 2011.